IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

DEBORAH A. MULLINS	:	
	:	
v.	:	CIVIL NO. CCB-07-2454
	:	
MAYOR & CITY COUNCIL OF BALTIMORE, *et al.*	:	
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MEMORANDUM

Now pending before the court is a motion for summary judgment filed by defendants Mayor and City Council of Baltimore (the "City defendants") and Charles Krysiak ("Mr. Krysiak") (together "defendants") against plaintiff Deborah Mullins ("Ms. Mullins"). Ms. Mullins alleges gender discrimination under Title VII of the Civil Rights Act of 1964 ("Title VII"), 42. U.S.C. §§ 2000e et seq., two violations of the First Amendment under 42 U.S.C. § 1983, and two state law tort claims. The issues in this motion have been fully briefed and no hearing is necessary. For the reasons stated below, the defendants' motion will be granted.

BACKGROUND

The plaintiff, Ms. Mullins, has over twenty-five years of experience in automotive body repair and, during the events at issue in this litigation, owned and operated a body shop in Baltimore City. In 2001, Baltimore City awarded Ms. Mullins a contract to repair city vehicles. Pursuant to her contract, the plaintiff submitted bids to the Baltimore City Department of Public Works ("DPW") Fleet Management Division ("Fleet Management"). Fleet Management was responsible for selecting an outside vendor to perform body work on city vehicles or performing

the work internally at Baltimore City Central Garage ("Central Garage"). Ms. Mullins often interacted with Fleet Management personnel including Mr. Krysiak, the chief of Fleet Management, and Robert Gibson, the assistant chief. She alleges that Fleet Management employees, including Mr. Krysiak and Robert Gibson, made derogatory comments regarding her gender.

Between December 2003 and February 2004, Ms. Mullins appeared in three local news broadcasts that were critical of the safety of city vehicles. Following the broadcasts, in March 2004, Baltimore City terminated Ms. Mullins's contract. In December 2004, Ms. Mullins filed a lawsuit against the City defendants in state court claiming a First Amendment violation and breach of contract. That suit was still pending when the instant suit was filed.

Sometime in late 2004 or early 2005, Ms. Mullins orally agreed to provide services to William Ballard ("Mr. Ballard") and his company Location Age, LLC ("Location Age"). Mr. Ballard, who had been providing information and technology services to Baltimore City since 1999, was overseeing a city-funded pilot project testing geographic tracking of city vehicles. Mr. Ballard found Ms. Mullins's company through the city's woman- and minority-owned businesses website and selected her to install global positioning system ("GPS") devices in city vehicles. Fifteen vehicles were involved in the initial pilot. Ms. Mullins installed the GPS devices in six of these vehicles, and Baltimore City handled the remaining installations.

On September 5, 2005, Ms. Mullins arrived at Central Garage unannounced and attempted to check the status of two GPS devices that were having problems. Mr. Krysiak refused to allow her to enter the garage. According to Ms. Mullins, Mr. Krysiak told her that Steven Potter, a lawyer for Baltimore City, told him not to allow Ms. Mullins to enter city

property because of her pending lawsuit. Mr. Krysiak contends that he refused to allow Ms. Mullins to enter Central Garage because he was unaware of her agreement with Location Age to service city vehicles.

After the initial pilot phase, Baltimore City expanded the GPS project to include 75 more vehicles. Mr. Ballard solicited additional bids to perform the installation work and chose a new vendor that quoted him the lowest price and specialized in GPS installation. According to Ms. Mullins, Mr. Ballard sought another installer and ceased sending her work only after Steven Potter told him not to work with her because of her pending lawsuit.

In 2006, Fleet Management's auto body shop supervisor ("supervisor"), Jim Wilburn, retired. At that time, Robert Brown ("Mr. Brown"), a city employee since 1981, had been working as Jim Wilburn's unofficial assistant for four years performing various supervisory duties. Both Mr. Brown and Ms. Mullins applied for the newly vacant position.

The Department of Human Resources identified five applicants, including Ms. Mullins, as having the minimum qualifications for the supervisor position. Four of the applicants were interviewed for the position: Ms. Mullins, Jimmy Mullins,[1] Jeffrey Gibson, and Mr. Brown. Interviews were held on May 15, 2006 before a three-member panel of Baltimore City employees: Barbara Neale ("Ms. Neale") from human resources; Edward Shelley, a motor equipment maintenance supervisor for Fleet Management; and Anthony DelBarto, an equal opportunity officer. The panel asked the applicants the same ten questions and scored them using model answers as guides. The panel also scored the applicants on their education and experience,

[1]Jimmy Mullins is the plaintiff's husband. He has also filed a complaint in this court alleging he was not selected for the supervisor position due to age discrimination.

based on their resumes, and on their overall communication skills presented during the interview. The scores of the interviews were as follows: Mr. Brown, 321; Jeffrey Gibson, 306; Jimmy Mullins, 245; Ms. Mullins, 233. The panel sent the interview scores to Mr. Krysiak, who selected Jeffrey Gibson for the supervisor position. Mr. Brown then filed an internal grievance alleging Jeffrey Gibson was selected as supervisor because his uncle, Robert Gibson, was the assistant chief of Fleet Management. In response, Thomas Burgess ("Mr. Burgess"), DPW's human resources director, reviewed the interview scores and directed Mr. Krysiak to fill the position with the highest-ranked applicant – Mr. Brown.

According to Ms. Mullins, the interview process was flawed because, *inter alia*, Mr. Brown falsified his resume,[2] which the City defendants failed to verify, and was unqualified for the position. On August 14, 2006, the plaintiff filed a charge of discrimination with the Maryland Commission on Human Rights and the U.S. Equal Employment Opportunity Commission claiming she was not selected for the supervisor position due to her gender and as retaliation for her pending lawsuit against the City defendants. On September 17, 2007, the plaintiff filed a complaint in this court alleging gender discrimination, two violations of the First Amendment, tortious interference with contract, and tortious interference with economic relations. She seeks back and front pay, compensatory and punitive damages, and attorneys' fees and costs. On June 30, 2008, the defendants filed a motion for summary judgment.

[2]The plaintiff alleges Mr. Brown falsified his resume by claiming he was the "Assistant Supervisor" at Central Garage, when in fact no such official title exists.

ANALYSIS

Rule 56(c) of the Federal Rules of Civil Procedure provides that summary judgment "should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The Supreme Court has clarified this does not mean that any factual dispute will defeat the motion. "By its very terms, this standard provides that the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986) (emphasis in original).

"A party opposing a properly supported motion for summary judgment 'may not rest upon the mere allegations or denials of [his] pleadings,' but rather must 'set forth specific facts showing that there is a genuine issue for trial.'" *Bouchat v. Baltimore Ravens Football Club, Inc.*, 346 F.3d 514, 525 (4th Cir. 2003) (alteration in original) (quoting Fed. R. Civ. P. 56(e)). The court must "view the evidence in the light most favorable to . . . the nonmovant, and draw all reasonable inferences in her favor without weighing the evidence or assessing the witness' credibility," *Dennis v. Columbia Colleton Med. Ctr., Inc.*, 290 F.3d 639, 645 (4th Cir. 2002), but the court also must abide by the "affirmative obligation of the trial judge to prevent factually unsupported claims and defenses from proceeding to trial." *Bouchat*, 346 F.3d at 526 (internal quotation marks omitted) (quoting *Drewitt v. Pratt*, 999 F.2d 774, 778-79 (4th Cir. 1993), and citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986)).

A. Title VII Gender Discrimination: Count I

Ms. Mullins contends that by not selecting her for the supervisor position the City defendants discriminated against her based on her gender. Because she does not present direct evidence of gender discrimination, the court will analyze her claim under the three-pronged burden-shifting framework set forth by the Supreme Court in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). Under this framework, Ms. Mullins must first make out a *prima facie* case of Title VII discrimination. If she succeeds in carrying this initial burden, then "the burden shifts to the employer ... 'to articulate a legitimate, nondiscriminatory reason for the adverse employment action.' " *Lettieri v. Equant Inc.*, 478 F.3d 640, 646 (4th Cir. 2007) (quoting *Hill v. Lockheed Martin Logistics Mgmt., Inc.*, 354 F.3d 277, 285 (4th Cir. 2004) (*en banc*)). Once such a reason is provided, the burden shifts back to the plaintiff to demonstrate that the given reason was a pretext for unlawful discrimination. *Id.*

In order to establish a *prima facie* case of discrimination in hiring, Ms. Mullins must prove that: (1) she is a member of a protected group; (2) the defendants had an open position for which she applied or sought to apply; (3) she was qualified for the position; and (4) she was rejected under circumstances giving rise to an inference of discrimination. *Evans v. Techs. Applications & Serv. Co.*, 80 F.3d 954, 959-60 (4th Cir. 1996). It is undisputed that Ms. Mullins is a member of a protected class, that she applied and was qualified for the supervisor position, and that despite those qualifications she was not selected for the position. The City defendants contend that Ms. Mullins has failed to show that the circumstances of her non-selection give rise to an inference of discrimination.

Ms. Mullins alleges that the selection process was a sham, and she asks the court to infer

wrongdoing based, in large part, on her allegations that the interview panel had no experience in automotive body repair, that the City defendants failed to verify Mr. Brown's qualifications, and that the interview panel members failed to question the candidates about the core skills required for the supervisor position. Regardless of the wisdom of the selection process, however, the Fourth Circuit has noted that "Title VII is not a vehicle for substituting the judgment of a court for that of the employer," thus courts "do[] not sit as a kind of super-personnel department weighing the prudence of employment decisions made by firms charged with employment discrimination." *DeJarnette v. Corning Inc.*, 133 F.3d 293, 298-99 (4th Cir. 1998) (quotations and citations omitted). It is undisputed that all candidates who applied for the position went through the same application process: applicants who met the minimum qualifications for the position were invited to interview for the position; they were scored in the interview based on their experience and education, answers to the questions, and overall communication skills; and those scores were sent to the final decision maker. Ultimately, the candidate with the top scores in all of these areas was selected for the position.

While Ms. Mullins may believe the selection process was flawed, she has failed to identify any aspect of the interview process that even suggests a decision maker discriminated against her. *See, e.g., Obi v. Anne Arundel County, Md,* 142 F.Supp.2d 655, 662 (D. Md. 2001) (finding inference of national origin discrimination where plaintiff, a native of Nigeria, who ranked highest in objective qualifications was not selected after all-white, American-born panel of interviewers scored white, American-born candidate slightly higher in subjective interview). She alleges that several Fleet Management employees made disparaging comments about her gender; however, she offers no evidence nor does she even allege that any such comments were

made at the time of the selection process or by any of the individuals involved in selecting Mr. Brown as the new supervisor.[3] In light of the dearth of evidence suggesting the plaintiff was the victim of discrimination, it appears that she has failed to make out a *prima facie* case of discrimination.

Even assuming Ms. Mullins has made out a *prima facie* case, the City defendants have articulated a legitimate, nondiscriminatory reason for not selecting her for the supervisor position: the interview panel ranked her the lowest of all the candidates and ranked Mr. Brown, the ultimate choice for the position, the highest based on his experience, communication skills, and answers to the interview questions. In an attempt to show that the City defendants' nondiscriminatory reasons for her non-selection are pretextual, Ms. Mullins relies on the allegedly flawed interview process and her own opinion that she was more qualified than Mr. Brown.

As noted above, there is no indication that the selection process was applied any differently to Ms. Mullins than to the other candidates, and there is no evidence that the process operated invidiously against her based on her gender. While Ms. Mullins claims that the City defendants failed to verify Brown's resume, which would have uncovered his alleged falsification and identified her as the more qualified candidate, she offers no evidence that this oversight was based on discriminatory animus. Rather, Ms. Neale testified in her deposition that

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[3]The plaintiff accuses Mr. Krysiak and Robert Gibson, two Fleet Management supervisory personnel, of displaying gender-based animus toward her. As to Mr. Krysiak, it is undisputed that he was not involved in scoring the candidates and that Mr. Burgess, not Mr. Krysiak, ultimately selected Mr. Brown for the position. The record also shows that Robert Gibson did not participate in selecting the new supervisor because his uncle, Jeffrey Gibson, applied for the position.

human resources routinely does not verify the information on candidates' resumes in order to hasten the hiring process. And the plaintiff's contention that the subjective nature of the interview is evidence of pretext fails in light of her inability to offer any evidence that the interview process was discriminatory. *See, e.g.*, *Obi*, 142 F.Supp.2d at 669-70. As discussed above, where a hiring process, even a flawed one, is not discriminatory, it is not the province of the courts to sit in judgment of that process. Moreover, as to Ms. Mullins's allegedly superior qualifications, the Fourth Circuit has noted that "it is the perception of the decision maker which is relevant, not the self-assessment of the plaintiff." *Evans*, 80 F.3d at 960-61 (internal quotations and alterations omitted). Both candidates' resumes listed similar experience spanning twenty-five years in the field, and Ms. Mullins offers no evidence that any member of the interview panel or any other decision maker considered her to be more qualified yet selected Mr. Brown instead. Rather, all of the panel members, including Ms. Neale, the only woman on the panel, scored Ms. Mullins's experience lower than Mr. Brown's. Even if the City defendants' perception of Ms. Mullins's qualifications vis-a-vis Mr. Brown's was faulty, it would not necessarily follow that her claim of gender discrimination is meritorious; she has an affirmative obligation to establish pretext. *See St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 523-24 (1993). Ms. Mullins has failed to do so here.

B. First Amendment Retaliation: Counts II and III

Counts II and III are brought under 42 U.S.C. § 1983 for alleged violations of the First Amendment of the U.S. Constitution. Section 1983 establishes liability for "every person" who, under the color of law, deprives an individual of any rights, privileges, or immunities secured by

the Constitution. To state a claim for First Amendment retaliation, Ms. Mullins must establish that: (1) her speech was protected; (2) the defendants' retaliation adversely affected her constitutionally protected speech; and (3) there was a causal connection between her speech and the retaliation. *Suarez Corp. Indus. v. McGraw*, 202 F.3d 676, 686 (4th Cir. 2000). As to both counts, the defendants contend Ms. Mullins has failed to establish a causal connection between her speech and the alleged retaliation.

i. Non-Selection for Supervisor Position

Ms. Mullins alleges the City defendants violated her First Amendment rights by not selecting her for the supervisor position in retaliation for her participation in the news broadcasts and her pending lawsuit against Baltimore City. While the City defendants are subject to suit under § 1983, *see Monell v. Dep't Soc. Serv.*, 436 U.S. 658, 690 (1978), Ms. Mullins does not allege any facts that would establish liability on their behalf. It is well established that "a municipality can be found liable under § 1983 only where the municipality *itself* causes the constitutional violation at issue." *City of Canton v. Harris*, 489 U.S. 378, 385 (1989) (emphasis in original). A municipality cannot be held liable in a § 1983 action under a theory of *respondeat superior*. *Monell*, 436 U.S. at 694.

Similar to her claim of gender discrimination, Ms. Mullins offers no evidence that anyone involved in selecting Mr. Brown as supervisor retaliated against her. As noted above, she alleges that the selection process was a sham because, *inter alia*, no one on the interview panel verified Mr. Brown's resume and the questions did not accurately reflect the duties of the job. It is undisputed, however, that the process, while possibly flawed, was applied equally to all

applicants, and Ms. Mullins offers no evidence that the process was flawed specifically to disadvantage her. Ms. Mullins admitted that neither Mr. Burgess nor anyone on the interview panel was aware of her appearances on the news broadcasts or her lawsuit pending in state court. While Mr. Krysiak was aware of the plaintiff's history with Baltimore City, the evidence clearly indicates that he selected Jeffrey Gibson for the supervisor position only after receiving the interview scores from the panel, and it was Mr. Burgess who ultimately directed Mr. Krysiak to chose the highest scoring applicant – Mr. Brown. Ms. Mullins simply has offered no evidence to establish a causal connection between her First Amendment-protected activities and her non-selection for the supervisor position. Moreover, even if the court accepted her unsupported allegations that the city employees involved in her selection were retaliating against her, she offers no evidence that the retaliation arose from a city policy or custom. *See, e.g.*, *Carter v. Morris*, 164 F.3d 215, 218 (4th Cir. 1999) (explaining that allegations of scattered constitutional violations are not sufficient to establish a policy or custom for the purpose of creating municipal liability under § 1983). Thus, the court will grant the City defendants' motion for summary judgment.

ii. Interference with Location Age Contract

1. City Defendants

Ms. Mullins contends that the City defendants interfered with her contract with Location Age and convinced Mr. Ballard to cease doing business with her in retaliation for her participation in the news broadcasts and her pending lawsuit. As evidence of this retaliation, Ms. Mullins alleges that a Baltimore City employee, Steven Potter, told Mr. Krysiak that Ms. Mullins

was not permitted to enter Central Garage or other city property and told Mr. Ballard not to work with her. This evidence is inadmissible hearsay and, standing alone, cannot defeat summary judgment. *Greensboro Prof'l Fire Fighters Ass'n v. City of Greensboro*, 64 F.3d 962, 967 (4th Cir. 1995) ("[Hearsay] [e]vidence . . . is neither admissible at trial nor supportive of an opposition to a motion for summary judgment.") (citing Fed. R. Civ. Pro. 56(e) ("Supporting ... affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.")); *see also Byrd v. Baltimore Sun Co.*, 279 F.Supp.2d 662, 670 & n.7 (D. Md. 2003).

Even assuming her allegations are true, however, she offers no evidence and the court will not infer that these isolated communications stemmed from a city policy or custom designed to retaliate against Ms. Mullins. At best, she alleges that one or two city employees retaliated against her. The improper yet isolated actions of a single employee, however, are insufficient to hold the City defendants liable under § 1983. *See, e.g., Carter*, 164 F.3d at 218; *Chin v. City of Baltimore*, 241 F.Supp.2d 546, 549 (D. Md. 2003) (holding that Baltimore City could not be found liable under § 1983 for a single unconstitutional search by a city police officer). The § 1983 claim against the City defendants, therefore, cannot survive summary judgment.

2. Charles Krysiak

Ms. Mullins further alleges that Mr. Krysiak's compliance with the instruction to deny her entry into Central Garage violated her First Amendment rights. Mr. Krysiak, on the other hand, denies he was ever so instructed and maintains he denied the plaintiff entry because he was

unaware of any agreement she had with Location Age to service city vehicles. It is undisputed that Ms. Mullins did not contact anyone at Central Garage prior to arriving there unannounced on September 5, 2005.

As noted above, Ms. Mullins's evidence of retaliation – her own deposition testimony and affidavit alleging what city employees told Mr. Krysiak and Mr. Ballard – is inadmissible hearsay and cannot defeat summary judgment. *Greensboro*, 64 F.3d at 967. She offers no corroborating evidence to support her allegations nor does she offer any evidence that Mr. Krysiak's legitimate reason for denying her entry into Central Garage is pretext for retaliation.[4] *See Hartman v. Moore*, 547 U.S. 250, 260 (2006) (noting that without "but-for causation," a claim of First Amendment retaliation "fails for lack of causal connection between unconstitutional motive and resulting harm, despite proof of some retaliatory animus in the official's mind"). Accordingly, the court will grant Mr. Krysiak's motion for summary judgment.

C. Tortious Interference with Contract and Economic Relations: Counts IV and V

Maryland recognizes tort actions for "inducing the breach of an existing contract and, more broadly, maliciously or wrongfully interfering with economic relationships." *Kaser v. Financial Protection Marketing, Inc.*, 831 A.2d 49, 53 (Md. 2003) (quoting *Natural Design, Inc. v. Rouse Co.*, 485 A.2d 663, 674 (Md. 1984)). Ms. Mullins fails to raise a genuine issue for trial on either claim, and the court will grant the defendants' motion for summary judgment.

[4]Absent the inadmissible hearsay evidence, Ms. Mullins merely alleges that she showed Mr. Krysiak papers, which she was unable to produce during discovery, evidencing her agreement with Location Age. Even viewing this evidence in the light most favorable to Ms. Mullins, it fails to raise a genuine issue for trial.

i. Interference with Contract

Tortious interference with contract requires (1) a contract between the plaintiff and a third party; (2) the defendant's knowledge of the contract; (3) the defendant's intentional interference with the contract; (4) breach of the contract by the third party; and (5) damages. *Ultrasound Imaging Corp. v. Am. Soc'y of Breast Surgeons*, 358 F.Supp.2d 475, 479-80 (D. Md. 2005) (citing *Fraidin v. Weitzman*, 611 A.2d 1046, 1057 (Md. App. 1993)). Even assuming Ms. Mullins had a contract with Location Age,[5] which the defendants dispute, she offers no evidence that the defendants intentionally interfered with her agreement to do work for Location Age or that Location Age breached the agreement resulting in damages. As noted above, Ms. Mullins's only evidence that the City defendants or Mr. Krysiak intentionally interfered with her relationship with Location Age is inadmissible hearsay. Even taking this evidence into account, Ms. Mullins fails to raise a genuine issue as to the final two elements of the tort. Mr. Ballard testified that his agreement with Ms. Mullins extended only to the six vehicles that she serviced during the pilot phase of the project, and the plaintiff offers no evidence to the contrary. Thus, Ms. Mullins cannot establish that Location Age breached any agreement with her nor can she establish that she suffered any damages as a result.

ii. Interference with Economic Relations

Tortious interference with economic relationships requires an (1) intentional and willful act; (2) calculated to cause damage to the plaintiff's business; (3) done with the unlawful purpose to cause such damage and loss, without right or justifiable cause; and (4) damages.

[5]Ms. Mullins admitted that she did not have a written contract with Location Age.

Kaser, 831 A.2d at 53. "[T]o establish causation in a wrongful interference action, the plaintiff must prove that the defendant's wrongful or unlawful act caused the destruction of the business relationship which was the target of the interference." *Id.* at 54 (citation omitted). Here again, Ms. Mullins cannot establish that she suffered any damages as a result of the defendants' alleged interference. While Mr. Ballard testified that he discussed the plaintiff's lawsuit with Steven Potter, he further testified that the lawsuit was not a factor in his decision to use another installer and that no one specifically told him not to work with Ms. Mullins. Rather, he testified that he switched vendors for legitimate business reasons, namely that the vendor quoted a lower price and had more expertise installing GPS devices than did Ms. Mullins. The plaintiff fails to offer any contrary evidence that would raise a genuine issue for trial.

CONCLUSION

For the foregoing reasons the court will grant the defendants' motion for summary judgment. A separate order follows.

January 20, 2009
Date

/s/
Catherine C. Blake
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

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	:	
v.	:	CIVIL NO. CCB-07-2454
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ORDER

For the reasons stated in the accompanying Memorandum, it is hereby **ORDERED** that:

1. the defendants' motion for summary judgment (docket entry no. 18) is **GRANTED**;

and

2. the Clerk shall **CLOSE** this case.

January 20, 2009
Date

/s/
Catherine C. Blake
United States District Judge